MUNICIPAL CORPORATIONS—CONSTITUTIONAL LIMITATIONS ON INDEBTEDNESS—TIME OF CREATION OF DEBT—INJUNCTION.—The Constitution of Indiana provided that no city should ever become indebted for any purpose for a sum greater than 2 per cent of the value of the taxable property within its limits. In response to an urgent public need the City of Logansport contracted for an expensive sewer system, the city's portion of the cost of which was to be paid in ten annual installments. The sewer was completed and accepted by the City and the final estimate of that part of the cost chargeable to the city was about to be made when this action was brought to restrain the city from ever paying any portion of the cost of the sewer, on the ground that it had already exceeded the constitutional limit of indebtedness. *Held,* that an injunction would issue, as the city became indebted for the whole of its share of the cost of the sewer immediately upon the completion and acceptance of the sewer; and as it already owed an amount greater than 2 per cent of the taxable property the debt was illegal and void. *City of Logansport et al.* v. *Jordan* (1908), — Ind. —, 85 N. E. 959.

Constitutional limitations on the borrowing power of municipal corporations are of frequent occurrence and admitted benefit. The courts look upon them with favor and will construe them so as to prevent their being evaded, wherever possible. *Baltimore* v. *Gill,* 31 Md. 375; *Lobdell* v. *City of Chicago,* 227 Ill. 218, 81 N. E. 354. It was contended in the principal case that no indebtedness could arise against the city until the final assessment had been made and levied against the city. However, the law seems now to be settled that when a contractor has finished his work and it has been accepted by the city, a duty immediately devolves upon the city to pay the contract price regardless of what formal steps must be taken before that duty can be enforced. *City of Springfield* v. *Edwards,* 84 Ill. 626. And the fact that a debt is payable in annual installments does not relieve it from the constitutional inhibition if the consideration has been fully performed. *Schnell* v. *City of Rock Island,* 232 Ill. 89, 83 N. E. 462; *Brown et al.* v. *City of Corry et al.,* 175 Pa. 528, 34 Atl. 854. By the great weight of authority an injunction will lie at the suit of any taxpayer to restrain city officials from creating or paying an illegal debt. *Bradford* v. *City and County of San Francisco,* 112 Cal. 537, 44 Pac. 912; *Spilman* v. *City of Parkersburg,* 35 W. Va. 605, 14 S. E. 279.

MUNICIPAL CORPORATIONS—GRANT OF FRANCHISE—MANDAMUS—PERSONS ENTITLED TO RELIEF.—The city council passed an ordinance creating a new telephone franchise and directing that it be sold by the Board of Public Works at public auction. The ordinance provided that one of the two competing telephone companies in the city be not permitted to bid for the franchise and that, should complainant company buy the new franchise then said company's old franchise should thereupon become null and void. The Board of Public Works refused to hold the sale as provided in the ordinance. *Held,* (HOBSON, NUNN and CARROLL, JJ., dissenting), that the passage of this ordinance and directing its sale by the Board of Public Works was a proper exercise of municipal authority; that the provision relating to the annulment of

complainant company's prior franchise was not invalid as releasing an indebtedness or liability to the municipality; that the elimination of a competing company from the bidding is not repugnant to the constitutional provision against monopolies; that the making of the sale is a public duty and, upon the refusal of the proper municipal authorities to act, mandamus will lie at the suit of a private individual. *Louisville Home Telephone Company et al.* v. *City of Louisville et al.* (1908), — Ky. —, 113 S. W. 855.

As to the right of a private citizen to obtain mandamus to enforce a public right there is much conflict of authority, but it is generally conceded that when such citizen has a direct and special interest different from, or greater than, that of the public at large the writ will lie. *Commissioner* v. *Smith*, 5 Tex. 471; *Nebraska ex rel. Snow* v. *Farney*, 36 Neb. 537, 54 N. W. 862. And when the proper public authorities refuse to apply for the writ a private citizen may then bring suit without showing such special interest. *People ex rel. Ayres* v. *State Auditors et al.*, 42 Mich. 422, 4 N. W. 274; *Moses et al.* v. *Kearney*, 31 Ark. 261. When it is within the power of a city council to grant to private persons or corporations the right to use the city streets, for any purpose, it is perfectly proper for it to create franchises and provide for their sale by some board or officer of the municipality. *Hart* v. *Buckner et al.*, 54 Fed. 925; 5 C. C. A. 1. It was contended in the principal case that that part of the new franchise providing for the annulment of the complainant's former franchise, upon the purchase by the complainant of the new franchise, was in violation of a constitutional provision forbidding the state or any municipality to release any debt or liability, owing to such municipality. The prevailing opinion, however, basing its decision largely on *Cumberland Telegraph and Telephone Co.* v. *City of Hickman*, (1908), — Ky. —, 111 S. W. 311, held that the franchise relation was contractual and that as the city council had the power to make the contract they must also have the power to annul it with the consent of the other party, a position which, if carried to its logical conclusion, seems hardly tenable; and that, although the former franchise carried more compensation to the city, the benefits derived by the city from a public service company cannot be measured by the money compensation alone, and the city council is most competent to judge which of two franchises is the more beneficial to the city, and consequently entails the greatest obligation on the company. The latter view seems to be the sounder one upon which to base the holding. *Meech et al.* v. *City of Buffalo*, 29 N. Y. 198. Where a franchise is required to be sold at public auction, there being but two probable bidders, the authorities would scarcely seem to permit the exclusion of one of these bidders. *Finexan, etc.* v. *Central Bithulithic Paving Co., etc.*, 116 Ky. 495, 76 S. W. 415; *Fishburn et al.* v. *City of Chicago*, 171 Ill. 338, 49 N. E. 532, 39 L. R. A. 482, 63 Am. St. Rep. 236.

PARTITION—INFANT'S RIGHT TO RESCIND SALE ON ACCOUNT OF INADEQUACY OF CONSIDERATION.—Complainants filed a bill for partition. Commissioners were appointed. They fixed the value of the land at $11,070, and reported it not susceptible of an equitable division. By virtue of a decree of court the land was sold at public sale to the highest bidder for $7,800. The infant com-